

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: June 25-26, 2003

Reference No.: 2.4a.(3)
Action Item

From: ROBERT L. GARCIA
Chief Financial Officer

Prepared by: Brice D. Paris
Division Chief
Right of Way

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission adopt Resolution of Necessity C-18796, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department of Transportation is requesting a resolution at this time. Adoption of Resolution of Necessity C-18796 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-18796 - Norman A. Rubin

07-LA-405-KP 62.7-Parcel 78241-EA 201209 - Certification Date: 06/30/03 - RTL Date: 06/30/03 - (Freeway - gap closure project with flyunder structure). Authorizes condemnation of land in fee for a State highway and extinguishment of abutter's rights of access. Located near the city of Los Angeles at 15322 Ventura Boulevard.

Attachments

SUMMARY OF ISSUES

PROPERTY OWNER'S CONCERNS

The owner Mr. Norman A. Rubin through his attorney Mr. Michael H. Leifer has indicated he does not contest the need for the project, the design of the project, or the need for the parcel, only the effects of the project on his property. His concerns relate to: 1) the impact of the acquisition on current automobile parking use and the continued operation of a fast food business on the remainder of the parcel, and 2) the establishment of the amount of compensation.

The following is a description of the grantor's concerns:

1. Requested appraisal of entire property to include all improvements and a before and after study to determine severance damages.
2. Grantor was concerned about dust and noise during project construction.
3. Grantor is concerned because the acquisition will take five of his parking spaces that service the restaurant. This is the only parking, aside from street parking that services the restaurant. Restaurant patronage consists of a mix of local walk-in, vehicle drive-thru, and on-site parking. The grantor feels that without this parking, the restaurant would not be a viable business in which case grantor would require a full taking of the entire restaurant property.
4. Mr. Leifer has proposed changes to a Right of Entry Agreement to commit the State to certain terms of a potential exchange agreement for adjacent department owned land that may become excess to department needs. Other issues had to do with a monetary limitation on benefits.

DISTRICT'S RESPONSE

The following is the response given to grantor to address these concerns:

1. The market value for the property to be acquired by the State is based upon an appraisal prepared in accordance with accepted appraisal principles and procedures. In addition, the acquisition from the property is 11 percent of the overall property with no physical impact to the improvements.
2. Grantor was informed that the construction contract documents would require controlling and minimizing the dust and noise during construction by watering or applying dust palliative to unpaved areas.

3. An appraisal and corresponding full offer of just compensation has been made to the grantor for the property to be acquired. These are the minimum property rights required to construct the project and cannot be reduced further. The property to be acquired includes five parking spaces used in the operation of the grantor's business. The appraisal and resulting compensation offer includes an analysis of damages to the property for the loss of the five parking spaces.

Discussions are continuing and the department and the owners are actively seeking other ways to mitigate the loss of the parking spaces including an exchange of department land that is directly adjacent the grantor's property and that could provide for at least seven diagonal parking spaces. This is two more than what is currently available. This parking would be more convenient for the customers, because it will be directly adjacent to the restaurant, where the current parking is some 300 +/- feet away.

The conveyance of title to this excess parcel is subject to further negotiations between the State and the grantor. If an agreement is reached, the State will be able to make available this land to the grantor for replacement parking. The State may delay possession of the parcel it seeks to acquire until this parking is available.

The State's Contractor may be restricted from this area aside from a five foot wide strip adjacent to the Dickens Street sidewalk. This area is required to allow State Contractor room to construct the sidewalk.

The nature of the part take will not leave the parcel in a condition that is uneconomic in the market or to the owner, thus requiring a full take of the parcel.

4. The Department will continue to conduct discussions for the exchange of the excess to mitigate the loss of parking. Final approval of the sale or exchange of excess is subject to the approval of the California Transportation Commission (Commission). The issues raised by Mr. Leifer are compensatory in nature and outside the purview of the Commission.

Resolution of Necessity Appearance Fact Sheet**PROJECT DATA**

07-LA-405-KP 62.7

Location:

Route 405 in the City of Sherman Oaks, Los Angeles County

Limits:

Northbound 405 to US 101 connector from 0.1 km north of Sepulveda Boulevard to 0.3 km south of Route 101/405 Separation.

Contract Limits:

LA-405 KP 62.3/63.2

Cost:

Construction--\$24,041,000.00; R/W--\$3,800,000.00

Funding Source:

2002 State Transportation Improvement Program (STIP) HE-11 Program.

Number of Lanes:Existing: 2-northbound 405 to US 101 Connector.
Proposed: 3- northbound 405 to US 101 Connector.Proposed Major Features:

Interchanges: Widen and realign northbound 405 to US 101 connector on the right side. Construct a new bridge for the Greenleaf Street on-ramp to northbound 405. Construct retaining walls and a soundwall. Widen the Ventura Boulevard Bridge.

Other: Dickens Street, referred to as the Dickens Street bypass, to be constructed to facilitate traffic flow from Ventura Boulevard to new northbound on ramp.

Traffic:Existing (1999): 82,000 ADT at the northbound 405 to US 101 Connector
Proposed (2020): 114,000 ADT at the northbound 405 to US 101 Connector**PARCEL DATA**Property Owner:

Norman A. Rubin

Parcel Location:

Adjacent to the east side of the San Diego (405) Freeway near the Sepulveda Boulevard on and off-ramps.

Present Use:

Commercial, two tenants

Area of Property:

11,625 square feet

Area Required:

Parcel 78241-1,279 square feet, Fee for extension of Dickens Street Bypass.

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel met on June 11, 2003 at the Right of Way offices in Los Angeles. The Panel was chaired by Vern Rhinehart of Caltrans Headquarters Right of Way and included Panel members Mark Zgombic, Lisa Braham, Caltrans Legal Division and Karla Sutliff, Caltrans Headquarters Design. The property owner Mr. Norman A. Rubin and property owner's son Sam Rubin and property owner's counsel Michael H. Leifer were in attendance.

This report summarizes the findings of the Review Panel with regard to the four criteria required for a Resolution of Necessity and makes recommendation to the Chief Engineer.

NEED FOR THE PROJECT

Northbound Route 405, between Mulholland Drive overcrossing and the 405/101 Interchange, experiences heavy traffic congestion. A factor that contributes to the heavy congestion is the weaving movement required by motorists entering from the Sepulveda Boulevard/Ventura Boulevard on-ramp and intending to proceed to the northbound 405 (see Attachment B, Layout Plans). Motorists from the Sepulveda Boulevard/Ventura Boulevard on-ramp proceeding north to Route 405 must traverse over the two lanes of northbound Route 405/Route 101 Connector traffic within a distance of approximately 214 meters. Meanwhile, motorists from the two lanes of Route 405 intending to proceed southbound on Route 101 must move over to the number three lane of the branch connector. The Gap Closure Project proposes to add a lane on northbound 405 from Sepulveda Boulevard undercrossing to Ventura Boulevard undercrossing. This project includes a reconfiguration of the northbound on-ramp at Sepulveda Boulevard/Greenleaf Street. The northbound on-ramp at Sepulveda Boulevard would be realigned and would remain an access to northbound and southbound Route 101. A new "fly-under" ramp for access to the north bound Route 405 would be constructed. The northbound on-ramp at Ventura Boulevard and the existing ramp from the connector to northbound 405 would be eliminated. Dickens Street will be extended to minimize the traffic impact at the Sepulveda Boulevard/Ventura Boulevard intersection due to the closure of the northbound on-ramp at Ventura Boulevard. The reconfiguration of the on-ramp and the elimination of the ramp from the connector to north bound 405 would address the weaving problem previously discussed. This project would complete the improvements necessary to alleviate the traffic congestion, improve the overall vehicular circulation, and reduce the number of accidents at the northbound 405 (prior to the 405/101 Interchange) and at the northbound 405/northbound and southbound 101 Branch Connectors.

PROJECT DESIGN

Upon completion, the Gap Closure Project is threefold. Initially, to increase the flow of local commuter traffic, a lane will be added to the northbound 405 from the Sepulveda Boulevard Undercrossing to the Ventura Boulevard Undercrossing. This lane will accommodate a future high occupancy vehicle (H.O.V.) lane. The lane addition will necessitate the widening of the bridge structure at Ventura Boulevard.

Secondly, the existing on-ramp at Sepulveda Boulevard/Greenleaf Street will be reconfigured. The on-ramp to Route 101 will be realigned to the east allowing direct access. A new fly-under ramp will be constructed to provide access to the northbound 405. Retaining walls will be erected to secure the fill upon which the new ramp sections will be constructed.

The third and final item of the Gap Closure Project eliminates the on-ramp at Ventura Boulevard and a slip ramp that traverses from the Route 101 Connector to the northbound 405. These ramps will be permanently closed and ultimately razed.

The project specifications will minimize the congestion at the intersection of Ventura Boulevard and Sepulveda Boulevard. To mitigate the flow of high volume traffic that converges at this intersection, a bypass route will be implemented along Dickens Street.

The Environmental Document for this project is a "Negative Declaration/Finding of no Significance" and is combined with the Connector Widening Project (EA: 07-19130). The environmental document was approved on September 27, 2000. The current construction cost is \$24,041,000. The project is programmed in the 2002 STIP. The project is tentatively scheduled for advertisement in October 2003.

Construction is scheduled to begin in January 2004 with the estimated completion date of January 2006.

NEED FOR SUBJECT PROPERTY

The project will permanently close the Ventura Boulevard on-ramp to the 101 connector. The city of Los Angeles requested that mitigation measures be implemented to alleviate the traffic congestion that would be directed to the Sepulveda Boulevard/Ventura Boulevard intersection with the closure of the on-ramp. In coordination with the city of Los Angeles, Dickens Street was modified from a dead end street to a two-way street in order to bypass the Sepulveda Boulevard/Ventura Boulevard intersection. The subject property is required to make the above connection. To avoid the subject property, a small shopping center would need to be acquired instead. Other alternatives were studied and rejected by the city of Los Angeles.

The proposed acquisition area is improved with five asphalt paved parking spaces, chain link perimeter fencing, two trade signs and a concrete block storage shed. The shed houses two stationary five-horsepower air compressors. The subject larger parcel is improved with two separate structures. One is a "Class C" service garage characterized as an auto repair shop. The other structure is a one-story "Class S" restaurant. The State's proposed acquisition does not impact the subject's primary improvements.

The right of way requirements for this parcel are:

1. Parcel 78241, consisting of 1,279 square feet.

The need to acquire the parcel in question is for construction of the bypass route on Dickens Street.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record. The owner is not satisfied with the offer and negotiations are continuing. Issues as to compensation are outside the purview of the California Transportation Commission.

PANEL RECOMMENDATION

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

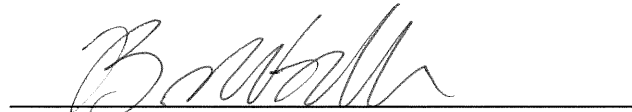
- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2, has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the CTC.



VERNON V. RHINEHART
Panel Chair

I concur with the Panel's recommendation:



BRENT FELKER
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL HEARING ON
JUNE 11, 2003**

Vern Rhinehart, Panel Member
Mark A. Zgombic, Panel Member
Kara Sutliff, Panel Member
Lisa Braham, Panel Member

Norman A. Rubin, Property Owner
Sam Rubin, Property Owner
Michael H. Leifer, Property Owner's Attorney

Doug Failing, District Director
Teresa Arias, Southern R/W Regional Manager
Tad Teferi, District 7 Project Management
Aline Antaramian, District 7 Design
Edward Andraos, District 7 Program Project Management
Bill Reagan, District 7 - Deputy Design Engineer
Wayne Harrold, Acting R/W Project Delivery Manager – L.A. Field Office
Andrew Nierenberg, District 7 Project Delivery Manager
C. Paul LaMond, Chief R/W Acquisition District 7
Dorothy Rhan, R/W Acquisition District 7

CHRONOLOGY OF OFFICIAL CONTACTS AND EVENTS

Significant Dates:

- | | |
|------------|---------------------------------|
| 08/03/2000 | Public Hearing Date |
| 07/23/2001 | Environmental document approval |
| 12/2/2003 | Advertising Date |
| 06/2004 | Contract Award Date |
| 07/2007 | Project Completion Date |
-
- | | |
|---------|---|
| 11/6/01 | Design sent preliminary layout plan to Sam Rubin per his telephone request. |
| 1/2/02 | Design received letter from Norman Rubin requesting to meet to discuss the Gap Closure Project. |
| 2/06/02 | <p>A meeting with Norman and Sam Rubin was held to discuss the project and possible mitigation to the Rubin parcel. Rubin's main concern was that we were taking his parking area and that the hot dog stand would be shut down without the parking area being replaced. Design provided Rubin with a couple of mitigation options:</p> <ol style="list-style-type: none">1) Shifting Dickens Street to the west to provide parking area next to Rubin's parcel.2) Provide parking on the west side of Dickens Street for Rubin. <p>Rubin didn't think either parking scenario was viable and wanted to be bought out. In spite of Rubin's decision, Design realigned Dickens Street to accommodate a parking area next to Rubin's parcel.</p> |
| 3/12/02 | Community meeting to discuss project with business owners. |
| 2/13/03 | Community meeting to discuss traffic and parking analyses. |
| 4/22/03 | <p>First Written Offer – State representative met with Norman Rubin and his son Samuel Rubin at their business office located at 729 Montana Ave., Suite #7, Santa Monica, CA. Offered Grantor the full market appraised value \$227,000.00. State gave him copies of maps, contracts, title report, appraisal summary statement and other documents required by escrow. Grantor would not consider compensation until after review of map showing after condition, Caltrans' reconsideration of appraisal to include an additional parking space that he would use for location of his compressors and receipt of additional information regarding replacement parking.</p> |

- 4/30/03 Telephone call to Norman Rubin. Both Rubin and his son Samuel away from the office until Friday p.m. State left a message that State would mail the maps to him as well as additional information regarding replacement parking.
- 5/7/03 State received a telephone call from Rochelle at Rubin's office. According to Rochelle, Rubin is requesting copies of supporting documents for Title Report items 6-15. State informed Rochelle that State would check to see if we had copies. If not, she could request through title company. Rochelle indicated that she had already tried FAT Co & was told the State would have to request the docs because the State is their client. State informed Rochelle that State would request if she did not want to open her own account.
- 5/8/03 State called Rubin's office to speak with Norman Rubin. Both Norman and Samuel Rubin were on the line. State inquired whether Rubin received the additional information mailed to him and whether he had considered the original offer or the option for replacement parking discussed in my 4/30/03 letter. Rubin inquired whether the replacement parking would belong to him in fee -State responded yes. Rubin then said that he felt a re-appraisal should be done of the entire property. State requested a personal meeting with Rubin to discuss his issues. State told Rubin that State would invite the acquisition chief (my boss), project engineer and project delivery manager. Rubin agreed and informed State that he would invite an attorney friend. We agreed to meet at the site on 5/15/03 at 12:30 pm.
- 5/9/03 Received call from Design Engineer requesting a meeting date change to accommodate prior commitments by their office. State called Rubin's office; Rubin's secretary called back and said that the requested date change was not good but could meet on Friday. State told the secretary that we would leave the date as scheduled.
- 5/15/03 Met with property owner Rubin at the site. Also attending was Grantor's son Samuel, Grantor's attorney Michael Leifer and Grantor's architect. Caltrans represented by myself, Paul LaMond, Wayne Harold, Aline Antaramian and 1 additional staff Engineer from Design.
Issues discussed:
Maps & Plans showing the project elevations
Size of the proposed replacement parking area
Possibility of angle parking vs. parallel parking shown on maps
Grantors request for re-appraisal of entire property to show before and after condition.
Right of Entry: Attorney for Grantor will consider
- 5/20/03 Paul LaMond informed agent that he left a vm msg for Grantor's attorney informing him that the NOI would be faxed later today. I faxed the NOI to

Grantor's attorney, mailed original + copy to attorney via regular mail.
Started draft appearance info sheet.

5/22/03 Received phone call from Taz (Design Eng). Maps ready to be delivered to Rubin. Taz agreed to mail maps to Rubin. Too late today for me to deliver – long weekend after today.

State called Rubin to inform him to expect maps in the mail. Rochelle asked about the T.R. supporting docs. State told Rochelle that an order had been placed and State would send her copies as soon as they are delivered to agent.

5/28/03 Letter to Grantor's attorney inquiring about his decision to sign a Right of Entry and informing him of need for 1st & 2nd level reviews by Tuesday June 3, 2003.

5/29/03 Faxed Revised Appraisal Summary Statement to Grantor and Grantor's attorney-Leifer. Leifer called LaMond and requested a legal description of the excess parcel.

6/2/03 Received phone call from Project Delivery Manager Harrold. Agent was informed that another letter should be sent to Grantor's attorney indicating 1st & 2nd level reviews can be on Thursday 6/5 or Friday 6/6.

Further instructions to update appearance info sheet to include more info regarding the parking (before & after) conditions + efforts to accommodate Grantor;s request for parking; update chronology.

6/2/03 Legal description and total square footage (5,511) for excess parcel was faxed to Grantor's attorney. Letter requesting confirmation of availability to attend combined 1st & 2nd level review faxed to Grantor's attorney.

6/3/03 Acquisition Chief, Paul LaMond discussed excess area with Grantor's attorney Michael Leifer. Leifer indicated he & his client was under the impression that the entire area along the west side of Grantor's property was the excess area. LaMond explained that only a portion would be decertified as excess. Grantor stated that Project Engineer had indicated that all of the area could be made excess not just the rectangle as indicated on the diagram. LaMond contacted Kaz Kayoda, the project engineer. He stated that entire strip could, indeed, be declared excess. Called attorney Leifer and relayed this information to him. He stated that he would FAX proposed changes to the Right of Entry.

6/4/03 Received faxed letter that neither he nor Grantor Rubin would be able to attend Friday's 1st and 2nd level hearing. Also received faxed Right of Entry

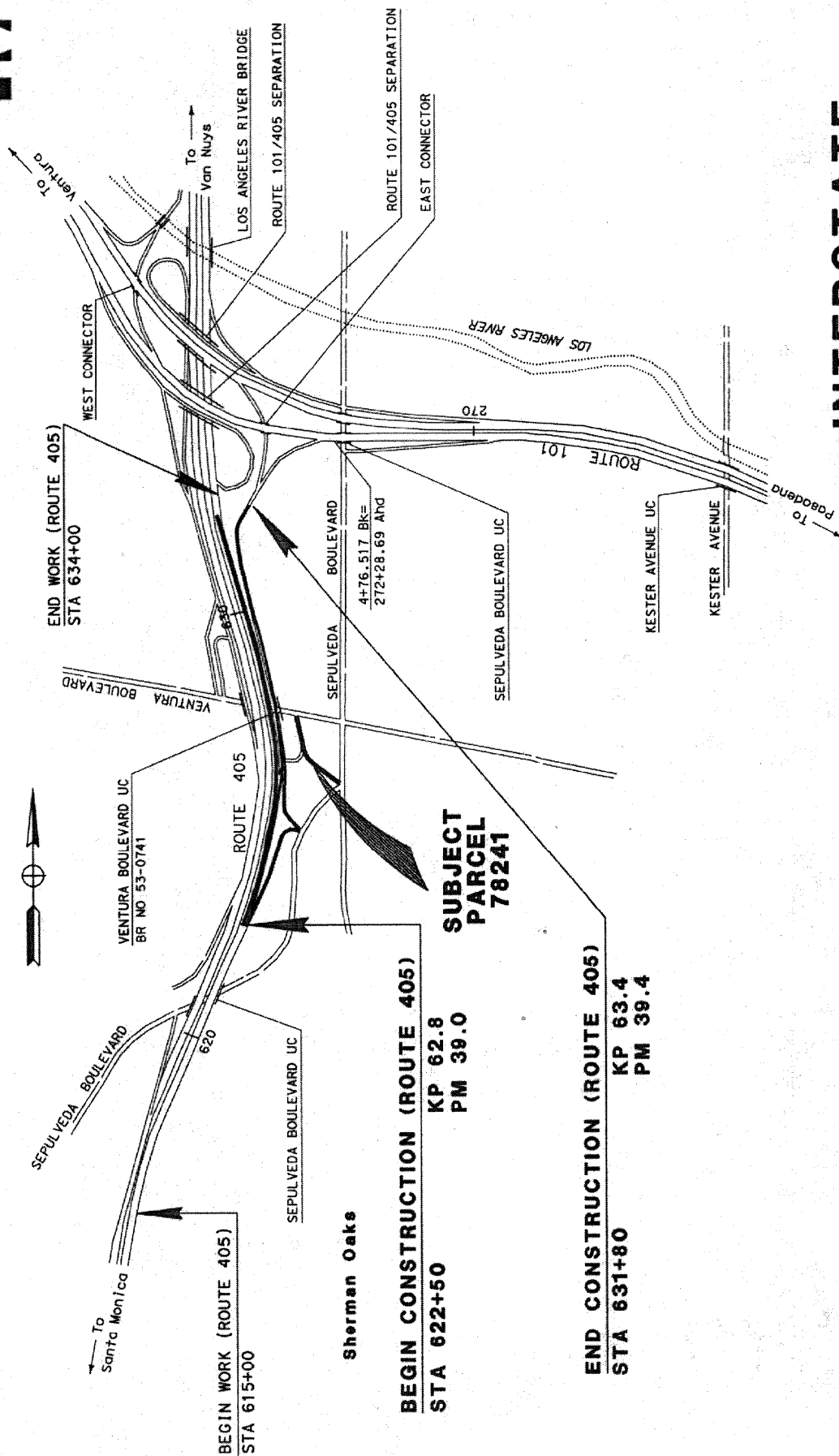
(R/E) proposal by Leifer. Wayne Harrold discussed R/E with both Brice Paris and Teresa Arias.

- 6/5/03 LaMond Faxed letter to Leifer that 1st and 2nd level review would be scheduled for Friday anyway. Leifer called and appeared angry that we were setting up this meeting when he could not attend. Stated that, without the excess, grantor would be requesting a full take. Was contacted by Wayne Harrold and told that Headquarters had decided not to have 1st and 2nd level on Friday. Harrold stated that it would be scheduled for Tuesday or Wednesday of next week (June 10 or 11). Called Mr. Leifer and conveyed this to him. He stated that he is having surgery and would let us know early Monday morning June, 9 whether or not he could attend.
- 6/5/03 Acquisition Chief, LaMond received fax from Leifer. Letter stating his client request a full-take offer. LaMond faxed letter to Leifer informing him that 1st & 2nd level reviews rescheduled for Wed 6/11/03.
- 6/6/03 Bill Reagan informed Wayne Harrold that we can dedicate five spaces for Rubin in public parking for the duration of the project or until the excess is available. We can use his signs and paint the spaces to show they are just for him.

Attachments: Exhibit Map "A" and Exhibit Map "B"



CITY OF LOS ANGELES



INTERSTATE

EXHIBIT "A"

07-LA-405-K.P.62.3/63.4





CITY OF LOS ANGELES

625

SAN

DIEGO

FWY

627

(LA 405)

LINE DATA		BEARING
LINE	DISTANCE	
1	4.346	S24°30'50"E
2	3.936	S03°11'39"E
3	1.799	N46°52'39"W
4	68.882	N43°08'31"E
5	38.569	S01°40'46"W
6	7.554	S88°24'50"W
7	1.899	S88°24'50"W
8	21.449	N55°10'42"E
9	6.568	N21°00'35"E
10	9.444	N5°39'32"E
11	9.444	N5°39'32"E
12	10.298	N09°02'23"W
13	11.932	N09°02'23"W
14	5.923	S05°09'21"W
15	5.583	N76°53'00"W

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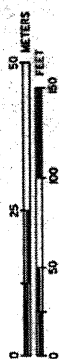
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INTERSTATE

EXHIBIT "B"

07-LA-405-K.P.62.7



DETAIL "A"
NOT TO SCALE

DETAIL "B"
NOT TO SCALE

CURVE DATA		
CURVE	RADIUS	LENGTH
1	12,000	92°32'38"
2	23,000	03°29'21"
3	28,708	38°50'42"
4	142,869	06°45'00"
5	10,077	95°15'28"
6	198,120	02°44'08"
7	24,136	39°30'17"
8	6,096	59°25'21"
9	6,096	30°26'16"
10	463,493	04°15'51"
11	328,232	01°12'48"
12	28,708	02°32'01"
13	463,493	0°29'53"
14	91,440	10°32'14"
15	20,000	05°00'54"
16	198,120	01°47'21"
17	198,120	03°31'36"
18	24,136	01°52'21"
19	22,400	14°20'01"
20	198,120	02°32'56"